

Before the  
Administrative Hearing Commission  
State of Missouri



DIRECTOR OF DEPARTMENT  
OF PUBLIC SAFETY,

Petitioner,

vs.

DONALD E. POWELSON,

Respondent.

No. 14-0787 PO

**DECISION**

Donald E. Powelson is subject to discipline because he committed two criminal offenses.

**Procedure**

On May 20, 2014, the Director of the Department of Public Safety (“the Director”) filed a complaint seeking to discipline Powelson. On May 27, 2014, we served Powelson with a copy of the complaint and our notice of complaint/notice of hearing by certified mail. On May 28, 2014, Powelson filed an answer. On May 30, 2014, the Director filed a motion for summary decision. Regulation 1 CSR 15-3.446(6)<sup>1</sup> provides that we may decide this case without a hearing if the Director establishes facts that Powelson does not dispute and entitle the Director to a favorable decision.

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<sup>1</sup> All references to CSR are to the Missouri Code of State Regulations as current with amendments included in the Missouri Register through the most recent update.

We gave Powelson until June 18, 2014, to respond to the motion, but he did not respond. Therefore, the following facts are undisputed.

### **Findings of Fact**

1. Powelson is the holder of a valid Class A Peace Officer License. His license is, and was at all relevant times, current and active.
2. On November 23, 2013, Powelson committed the criminal offense of driving while intoxicated when he operated his motor vehicle while under the influence of alcohol.
3. On November 23, 2013, Powelson committed the criminal offense of driving with excessive blood alcohol content when he operated his motor vehicle while with a blood alcohol limit in excess of eight-hundredths of one percent.

### **Conclusions of Law**

We have jurisdiction to hear this complaint.<sup>2</sup> The Director has the burden of proving that Powelson has committed an act for which the law allows discipline.<sup>3</sup> The Director relies on an affidavit proving licensure, and Powelson's admission that he committed the two criminal offenses.

The Director argues that there is cause for discipline under § 590.080:

1. The director shall have cause to discipline any peace officer licensee who:

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- (2) Has committed any criminal offense, whether or not a criminal charge has been filed[.]

In the complaint, the Director alleges Powelson committed the criminal offense of driving while intoxicated under § 577.010:

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<sup>2</sup> Section 590.080.2. Statutory references are to the 2013 Supplement to the Revised Statutes of Missouri.

<sup>3</sup> *Missouri Real Estate Comm'n v. Berger*, 764 S.W.2d 706, 711 (Mo. App., E.D. 1989).

1. A person commits the crime of “driving while intoxicated” if he operates a motor vehicle while in an intoxicated or drugged condition[.]

The Director also alleges Powelson committed the criminal offense of driving with excessive blood alcohol content under § 577.012:

1. A person commits the crime of “**driving with excessive blood alcohol content**” if such person operates a motor vehicle in this state with eight-hundredths of one percent or more by weight of alcohol in such person’s blood.

In his answer to the complaint, Powelson states: “I admit to the charges stated in the complaint, driving while intoxicated and driving with excessive blood alcohol content on November 23, 2013.” We find Powelson committed the two criminal offenses, and there is cause for discipline under § 590.080.1(2).

In his answer, Powelson also states: “I have been an officer for 30 years with no history of problems within my department. I made a very poor decision on November 23, 2013 that I hope does not cost me my career.” The function of this Commission is to determine whether there is cause for discipline, which we have done. Powelson will have an opportunity to argue the level of discipline to be imposed at a hearing before the Director.<sup>4</sup>

### **Summary**

We grant the motion for summary decision and cancel the hearing.

SO ORDERED on July 25, 2014.

\s\ Mary E. Nelson  
MARY E. NELSON  
Commissioner

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<sup>4</sup> Section 590.080.3.